COURT OF QUEEN'S BENCH.

CARPUE V. THE BRIGHTON RAILWAY COMPANY.

FRIDAY, Feb. 9.—Lord Denman this morning delivered the judgment of the court in this case. The only question remaining for decision was whether the defendants were entitled to notice of action under the 252nd section of the Act. For the necessity of such notice it was argued, that the declaration charged the injury to have been done to the plaintiff by the defendants' omission to do some of the works required by the Act, and the *dictum* of Baron Parke in the case of "Palmer against the Grand Junction Railway" was cited, where the notice was not thought necessary; but that *dictum* was this, that if the action was founded upon neglect in not fencing the railway, whereby the travelling became dangerous to those passing on it, assuming that obligation to be the result of the provisions of the Act, the case would have fallen within the section requiring notice; but when the matter was looked at and explained, he said it appeared the action was not of that nature, but the defendants were sued as common carriers, and the learned judge commented on the fact proved in that case, and considered it did not come within the Act. In deference to that *dictum*, leave was given to move to enter a nonsuit, and a rule was granted and largely discussed, but the Court was not now called upon to consider how far that *dictum* was correct law, because the Court was clearly of opinion that this injury had arisen from the defendants' misconduct as carriers, and not as proprietors; but in considering the evidence it was impossible to exclude some reference to the state of the railway; hence the Court thought there was no foundation for any argument in favour of the necessity of notice, and the plaintiff was, therefore, entitled to retain his verdict.

Rule discharged.

LORD MINING UNDER HIS TENANT'S PREMISES.

HILTON V. LORD GRANVILLE.

FEB. 10.—In this case, which was argued on Monday last, Lord Denman delivered the judgment of the Court. This was an action on the case for an injury done to two ancient houses, one occupied by the plaintiff, and the other held under him by a tenant. The declaration stated, that the plaintiff was lawfully possessed of certain houses, with the appurtenances, situate at Newcastle-under-Line, supporting which houses were certain foundations, which the plaintiff of right had enjoyed, and was enjoying, for the support of his house, and that on divers days and times, without the leave and license of the plaintiff, the defendant, intending to destroy the foundations, negligently and improperly worked certain mines underground, and dug for ores and minerals, and that by reason thereof the foundations of the house became and were greatly weakened, injured, and damaged, and rendered unsafe and incapable of supporting the house; in consequence whereof the house cracked, sank in, and was in great danger of falling down and being destroyed, and the value of it was reduced. The third plea to this declaration was as to the working of the mines underground; that, before the making of the lease to the plaintiff, the defendant had a grant of the right of mining from the present Queen; and it then proceeded to state, that from the time whereof the memory of man was not to the contrary, he had a right to get minerals and dig and work such mines under the dwelling-houses in such manner as might be expedient for the purpose of getting the ore, paying to the respective occupiers of the surface reasonable compensation for or in respect of the use of the surface, and without making any compensation for any damage occasioned to any messuages, &c., by any acts done for the purpose of working the mines underground; and the defendant justified that this injury arose from the working the mines underground. These acts were justified by prescription in the third plea, and by custom on the fourth plea, by which the defendant claimed a right to do what was complained of. These pleas were demurred to as setting forth a prescription and custom which could not be sustained, they being uncertain and unreasonable. The Court made no distinction between the two pleas, for if either the prescription or custom were bad, the other must be so likewise; if one was valid, the other must be valid. The Court also thought the question as to the premises being freehold or copyhold did not affect the principle; if the custom prevailed to freehold property, it must also prevail as to copyhold. The principle on which the custom was said to be founded was laid down in a case where it was said that the objection to this custom, that it was only beneficial to the lord and prejudicial to the tenant, was of no weight, for it might have had reasonable commencement notwithstanding, for the lord might take less for the land; but the true objection was, that it was uncertain and unreasonable, as it might deprive the tenant of the full benefit of the land; and it was not to be supposed that any of the tenants would have taken the land subject to such a custom. The custom held invalid was, that so often as the lord of the manor sunk pits on the freehold land for working the collieries, he had been accustomed to cart the earth, &c., coming therefrom on the land, there to remain so long as he thought fit. Chief Justice Willes, after pointing out the unreasonableness of the custom, said no custom was more unreasonable than the present—it might deprive the tenant of the whole benefit from the land, because the lord might dig as often as he pleased, and at what time of the year he pleased; so that the lord might stay upon the tenant's land for ever. The case had been removed by error into this court; and after having been argued three times, the judgment against the custom was affirmed. Justice Lee said the question was whether this was a reasonable *lex loci*, and the Court held it not to be so, as it laid a great burden on the land; it savoured much of arbitrary power, and might have put it in the power of the lord utterly to deprive the tenant of the benefit of the land, there being no restriction as to time; and in the report it was remarked that the custom was very unreasonable, for it laid such a great burden on the land, without any advantage to the tenant, as tended to destroy his estate, and savoured much of arbitrary power; and what was said at the bar touching the public utility of coal-pits could not be considered, because the pits might have been worked without it, and to support the custom would be to take away the whole benefit of the custom. The words "at the will of the lord" did not appear, but such might be understood, because the lord sought to have the power of going upon the land at any time. Several cases have been cited to shew that such custom might be valid, but they had no bearing on the point. In one case the plaintiff had sued in trespass for digging and taking away his land, and the defendant justified in one plea under a custom. The general custom was traversed under the special custom. The defendant pleaded that he had made sufficient compensation. Upon the trial at bar the jury found that the compensation was insufficient. The injury to the foundation was in no way connected with the question. On that trial the greatest reliance was placed on some decisions in which, the custom being derogatory to the rights of the tenant, the original grant could not be maintained. Lord Kenyon had said, if it must be taken to import that a lord after granting rights of common might help himself to any portion, to the exclusion of the grantee, it was incompatible with other cases, and could not be supported. The defendant justified under the usage, and assuredly whatever the lord could reasonably be supposed to have reserved out of his grant consistent with the grant, that usage might be set up; but a claim destructive of the grant could not be set up, it was repugnant and absurd. The custom here pleaded had that destructive effect, and it was too clear to admit of any doubt. The judgment would therefore be for the plaintiff.

The capital of Berlin is about to be enriched with a new cathedral. The designs have been executed by M. Stüeler, after the suggestions of the king himself. It will be in the Italian style, and embellished with sculpture and painting. The vaults will be appropriated as a burial-place of the reigning family of Prussia. The estimate of the expense amounts to 38,000,000f."

ASSESSED TAXES CASES.

Determined by the Judges on Appeal.

May 18, 1841.

Windows—Shop.

A soda-water manufacturer held liable for the window of a shop where ginger-beer, soda-water, corks, &c., were exposed to sale, such shop being partly above and partly below the street, and part of the dwelling-house.

At a meeting of the commissioners of land and assessed taxes, acting for the division of the town of Cambridge, on the 9th day of November, 1840, the following case was heard and determined (48 Geo. 3, c. 55).

Mr. Thomas Birch, of this town, soda-water manufacturer, appealed against the assessor's charge of eight windows, and contended "that under the Act of 4 Geo. 4, c. 11, s. 1, he was entitled to one as a shop window where goods are exposed to sale, namely, ginger-beer, soda-water, corks, &c.; the room is partly above the street and partly below." He claims the exemption as being the basement story.

The facts of the case are these:—The party manufactures soda-water and ginger-beer in an underground room of his dwelling-house, which in all similar houses is used as a kitchen or washhouse; he is a wholesale vender of the above articles, and not a general retailer, but may occasionally dispose of a bottle of either of the above waters if any person happened to go to his house and requested to be served with a draught of either soda-water or ginger-beer; the selling of the corks spoken of relates to those which are necessarily put into the bottles. The above facts being detailed to the commissioners, they were of opinion that the room used as herein described did not come within the meaning of the Act of Parliament; they therefore confirmed the assessment. The appellant being dissatisfied, demanded a case for the opinion of her Majesty's judges, which we sign accordingly.

SAMUEL EVANS,
S. ADCOCK, } Commissioners.

We are of opinion that the determination of the commissioners is right.

J. PATTESON. J. GURNEY. T. COLTMAN.

Windows—Shop.

Two windows of a shop of appellant who had retired from business, but in which a small stock remained, and which she continued to sell; such shop being used for no other purpose, no goods being exposed for sale, and the shutters of one of such windows being almost always kept closed:—Held, liable to duty.

At a meeting of the commissioners of land and assessed taxes, acting in and for the hundred of Arfudwyis, held at Llanddwywe, the 21st and 22nd days of August, 1840, for the purpose of hearing appeals against the first assessments (48 Geo. 3, c. 55, sch. A.) :—Mrs. Margaret Griffiths, of Barmouth, appealed against a charge for twelve windows. The appellant stated that two out of that number are shop windows, for which she claimed exemption: that she had retired from business, and discontinued shop keeping for some time, but there being a few trifling things of her stock remaining, such as books, &c. she continued to sell the same; the room is used for no other purpose whatever; that there are now no goods exposed for sale in the said windows, one of which is scarcely ever opened, the shutters thereof remaining almost always closed. The commissioners, conceiving the appellant clearly entitled to an exemption for such windows, by virtue of the 1st section of 4 Geo. 4, c. 11, allowed the appeal, and reduced her assessment to ten windows; but the surveyor having expressed himself dissatisfied with such decision, inasmuch that the appellant had entirely ceased to be a shopkeeper, that there is no external appearance of a shop in passing the house, there being no goods exposed for sale in the said windows, one of which is invariably closed, demanded a case for the opinion of one or more of her Majesty's judges, which is here stated and signed accordingly.

RICHARD DAVIES,
DAVID EVANS, } Commissioners.

We are of opinion, that the determination of the commissioners is wrong.

J. PATTESON. J. GURNEY. T. COLTMAN.

Windows—Shop.

Appellant was not brought into charge for two windows in a shop, and claimed exemption for one window in a room of his dwelling-house on the first floor and immediately over the shop, in which room drapery goods were kept and exposed for sale, as the 4 Geo. 4, c. 11, grants exemption for three:—Held, chargeable for such one window.

At a meeting of the commissioners of land and assessed taxes, acting in and for the division of Eccl-manor, county of Merioneth, held at the White